

8. (SALE OF VACANT FEDERAL LAND OBTAINED THROUGH USE OF BASE, LIEU. LAND APPLICATION NO. 4846, SACRAMENTO LAND DISTRICT, LAKE COUNTY - ERNEST M. MCKEE, SR. - S.W.O. 5403.)

Subsequent to presentation of Calendar Item 15 attached, Mr. Ernest M. McKee, Sr., appeared on his own behalf in this case, and also for him appeared Mr. J. N. Tocher and Mr. Henry C. Spurr. The details of their arguments appear in the transcript.

The Executive Officer spoke with reference to the status of State scrip and the discontinuance of its use for a number of years.

Mr. Kenneth C. Smith stated that the application of Mr. McKee had been made strictly on a cash basis.

Mr. Paul M. Joseph, Deputy Attorney General, explained in further detail the opinion which his office had submitted to the Executive Officer under date of January 18, 1957, and further confirmed the opinion contained therein.

It was agreed that the attorneys for Mr. McKee would furnish Mr. Paul M. Joseph any brief they desired in the premises within 20 days of this meeting.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION DEFERS ACTION ON THE SALE OF THE $S\frac{1}{2}$, $W\frac{1}{2}$ OF THE $NE\frac{1}{4}$, AND $SE\frac{1}{4}$ OF THE $NE\frac{1}{4}$ OF SECTION 15, T. 11 N., R. 8 W., M.D.M., CONTAINING 440 ACRES IN LAKE COUNTY, TO ERNEST M. MCKEE, SR., UNTIL AN OPPORTUNITY IS HAD FOR THE STAFF OF THE STATE LANDS COMMISSION TO CONFER FURTHER WITH THE OFFICE OF THE ATTORNEY GENERAL AS TO THE APPROPRIATE ACTION TO BE RECOMMENDED AT A COMMISSION MEETING; SAID RECOMMENDATION IS TO BE MADE AT THE NEXT MEETING OF THE COMMISSION THAT IS NOT EARLIER THAN 30 DAYS BEYOND THE DATE OF THE CURRENT MEETING; THE TIME IN WHICH MR. MCKEE MAY MAKE PAYMENT OF THE ADDITIONAL APPLICATION DEPOSIT IS TO BE EXTENDED CONCURRENTLY.

Attachment

Calendar Item 15 (3 pages)

SALE OF VACANT FEDERAL LAND

15.

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An offer has been received from Ernest M. McKee, Sr., of Berkeley, California, to purchase the $S\frac{1}{2}$, $W\frac{1}{2}$ of $NE\frac{1}{4}$, and $SE\frac{1}{4}$ of $NE\frac{1}{4}$ of Sec. 15, T. 11 N., R. 8 W., M.D.M., containing 440 acres, in Lake County. Mr. McKee submitted the minimum required offer of \$2200.00, or \$5 per acre. Said land was clear-listed (conveyed) to the State by the Federal Government on June 15, 1956.

The sale of this land to Mr. McKee was referred to the State Lands Commission for consideration at its meeting held in Sacramento on August 15, 1956. Mr. McKee and his attorney, Mr. James Tocher, personally appeared before the Commission, contending that the land in question must, under the law, be sold to Mr. McKee at the value that was fixed at the time he made the initial deposit and, in addition, questioned the time at which the value should be established. Accordingly, the Commission adopted the following resolution (Item 19, Minute Page 2781-83):

"THE COMMISSION DETERMINES THAT IT IS TO THE ADVANTAGE OF THE STATE TO SELECT THE FEDERAL LAND COMPRISED IN THE $S\frac{1}{2}$, $W\frac{1}{2}$ OF $NE\frac{1}{4}$ AND $SE\frac{1}{4}$ OF $NE\frac{1}{4}$ OF SECTION 15, T. 11 N., R. 8 W., M.D.M., CONTAINING 440 ACRES IN LAKE COUNTY; THE COMMISSION FINDS THAT SAID FEDERAL LAND IS NOT SUITABLE FOR CULTIVATION, AND APPROVES THE SELECTION OF THE SUBJECT LAND, WITH THE UNDERSTANDING THAT THE TIME LIMIT FOR DEPOSITING THE ADDITIONAL MONEY REQUIRED TO MEET THE APPRAISED PRICE BE EXTENDED TO OCTOBER 15, 1956 TO GIVE THE APPLICANT ADEQUATE TIME TO PRESENT HIS RECOMMENDATIONS TO THE STAFF, AND THAT THE STAFF IN TURN MAKE ITS RECOMMENDATIONS TO THE COMMISSION AT THE EARLIEST POSSIBLE DATE, WITH THE APPLICANT AND THE STAFF TO AGREE ON QUESTIONS TO BE POSED TO THE ATTORNEY GENERAL AS TO THE APPROPRIATE TIME OF APPRAISAL."

Subsequently, a request for an opinion on certain questions was submitted to the Attorney General, the reply to which is as follows:

"TO: Honorable Rufus Putnam Executive Officer State Lands Commission 302 State Building Los Angeles, California	Date: January 18, 1957
FROM: Office of the Attorney General Department of Justice RAYMOND H. WILLIAMSON Deputy Attorney General	Subject: Application of Ernest M. McKee, Sr., for Indemnity Selection of Vacant United States Lands Not Suitable for Cultivation

"You have heretofore submitted your file pertaining to the above application and raised the following three questions in connection therewith:

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1. Did this application involve a sale of land for State scrip at a total purchase price of \$2200, or did it involve a sale of land for cash at the appraised value of \$100,100?
2. Assuming there was a sale for cash, is the appraised value of the land to be fixed as of the date of the filing of the application or as of the date of the allowance of the application by the Federal Government?
3. Does the State Lands Commission have jurisdiction to now disapprove the application on the ground that the application and accompanying documents indicated that the timber on the land was scrub timber when, in fact, it constituted a substantial quantity of merchantable timber?

"In answer to the first question, and upon a review of your file and the various documents and related matter contained therein, as well as the applicable rules and statutes, we are of the opinion that the application involved a sale for cash at the appraised value of \$100,100 or whatever appraisal figure is determined by the Commission.

"Our answer to your second question is that the date of valuation is to be fixed after allowance of the State application by the Federal Government in accordance with Section 2402(b) of Title 2, California Administrative Code.

"In answer to your third question and with particular reference to the State and Federal forms completed and sworn to by the applicant, we are of the opinion that the Commission, in the exercise of its discretion, may disapprove the application. We believe that the various State and Federal forms completed and sworn to by the applicant are fairly indicative that the land contained only scrub timber as no mention was made that merchantable timber existed on said property. Since there exists a wide difference in the valuation of scrub timber lands as compared with merchantable timber lands, the description of the subject land by the applicant constituted a material misstatement (see Section 7360, Public Resources Code; Wrinkle v. Wright (1902), 136 Cal. 491, 495; The People v. German Savings and Loan Society (1887), 72 Cal. 28; and cases cited in 21 Cal. Jur. 697, 705).

"Consequently, in addition to other grounds that may exist for disapproving the application such as failure to pay the appraised value of the property within the time allotted, the Commission might well disapprove the application on the above stated ground.

"Should you desire further advice on these matters, please so advise.

RAYMOND H. WILLIAMSON
Deputy Attorney General"

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At the meeting of August 15, 1956 it was also informally agreed that Mr. Tocher should submit his findings on land values to the Commission's staff, and that, in turn, the staff would submit its recommendations to the Commission. To date, no appraisal report has been submitted by Mr. McKee for review, and the only discussion between staff members and the applicant and Mr. Tocher concerning this matter occurred on October 9, 1956, during which a copy of an appraisal was displayed to staff members. No formal appraisal report has been submitted for review and analysis by the staff. However, a copy of the State appraisal was forwarded Mr. McKee on October 10, 1956.

While the request for an opinion was pending with the Attorney General, the Commission, by appropriate resolutions, from time to time extended the period during which Mr. McKee could submit the additional amount of \$97,900 to meet the appraised value, until 5:00 P.M., February 13, 1957.

The opinion of the Attorney General clearly indicates that the application of Mr. McKee involves a sale of the land therein for cash in accordance with existing law and rules and regulations of the State Lands Commission. In addition, the date of appraisal, as pointed out in the opinion, is clearly set forth in the rules and regulations of the Commission, which indicate that the value shall be fixed after allowance of the State application by the Federal Government. This allowance occurred by decision of the Manager of the Sacramento Land Office of the U. S. Bureau of Land Management, dated January 13, 1956, which classified the subject land as suitable for disposal under Section 7 of the Taylor Grazing Act, subject to future compliance with the laws and regulations governing indemnity selections. The land was inspected and appraised during the month of May, 1956.

IT IS RECOMMENDED THAT THE COMMISSION DEFER ACTION ON THE SALE OF THE $S\frac{1}{2}$, $W\frac{1}{2}$ OF THE $NE\frac{1}{4}$, AND $SE\frac{1}{4}$ OF THE $NE\frac{1}{4}$ OF SEC. 15, T. 11 N., R. 8 W., M.D.M., CONTAINING 440 ACRES IN LAKE COUNTY, TO ERNEST M. MCKEE, SR., UNTIL AN OPPORTUNITY IS HAD FOR THE STAFF OF THE STATE LANDS COMMISSION TO CONFER FURTHER WITH THE OFFICE OF THE ATTORNEY GENERAL AS TO APPROPRIATE ACTION TO BE RECOMMENDED AT THE NEXT REGULAR COMMISSION MEETING.